

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

HMR (USA) Incorporated
8301 Belvedere Avenue
Sacramento, CA 95826

Respondent.

Docket HWCA 20040522

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and HMR (USA) Incorporated, a Delaware corporation doing business in California (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent receives, handles, treats, stores, and/or disposes of cathode ray tubes at the following site: 8301 Belvedere Avenue, Sacramento, California 95826 (Site).

1.3. Inspection. The Department inspected the Site on June 10, 2003.

1.4. Authorization Status. The respondent does not have a state permit to manage hazardous waste, but has notified the Department of their intent to operate as a CRT material handler under the requirements provided in California Code of Regulations, title 22, division 4.5, chapter 23 related to the treatment of CRTs.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Consideration. The parties wish to avoid the expense of litigation and to ensure prompt compliance with the statutes and/or regulations cited herein.

1.7. Full Settlement. This Order shall constitute full settlement of the violations alleged below, but does not limit the Department from taking appropriate enforcement action concerning other violations.

1.8. Admissions. The Respondent admits the violations described below.

VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1. The Respondent violated California Code of Regulations, title 22, section 66273.83(c)(2) in that on or about July 1, 2002 the respondent began treating CRT material without preparing and maintaining records of a cost estimate for closure pursuant to California Code of Regulations, title 22, section 66265.142 by no later than 30 days prior to treating any CRT material. The respondent was unable to provide a cost estimate for closure when asked during a June 10, 2003 inspection conducted by the Department.

2.2. The Respondent violated California Code of Regulations, title 22, section 66273.83(c)(3) in that on or about July 1, 2002 the respondent began treating CRT material without submitting to the Department documentation demonstrating financial assurance for closure pursuant to California Code of Regulations, title 22, section 66265.143 by no later than 30 days prior to treating any CRT material. The respondent was unable to provide documentation demonstrating financial assurance for closure when requested during a June 10, 2003 inspection conducted by the Department.

2.3. The Respondent violated California Code of Regulations, title 22, section 66273.83(c)(4) in that on or about July 1, 2002 the respondent began treating CRT material without submitting to the Department documentation

demonstrating financial responsibility for liability pursuant to California Code of Regulations, title 22, section 66265.147 by no later than 30 days prior to treating any CRT material. The respondent was unable to provide documentation demonstrating financial responsibility for liability when requested during a June 10, 2003 inspection conducted by the Department.

SCHEDULE FOR COMPLIANCE

3. Respondent shall comply with the following: The Respondent has come into compliance in regard to the violations described in section 2 of this Order and agrees to stay in compliance with applicable laws and regulations in the future.

3.2. Submittals. All submittals from Respondent pursuant to this Consent Order shall be sent to:

Mr. Paul S. Kewin, Section Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to

this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document as deemed necessary and approve the document as modified, or

- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the Site, in the surrounding area, or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as is needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended by the term of such Stop Work Order.

3.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare, or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized

representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

3.9. Sampling, Data, and Document Availability.

3.9.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data (including, without limitation, the results of any such sampling, testing and monitoring) generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

3.9.2. Respondent shall allow the Department and/or its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

(a) comply with that request,

(b) deliver the documents to the Department, or

(c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.10. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 4.3, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that were submitted by Respondent pursuant to the violations set forth above, and/or this schedule for compliance, and were approved by the Department are hereby incorporated into this Order.

3.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Action. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.3. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.4. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

4.5. Time Periods. "Days" for the purpose of this Order means calendar days.

4.6. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order.

PENALTY

5.1. Respondent shall pay the Department a total of \$105,000.00, of which \$90,000.00 is a penalty and \$15,000.00 is reimbursement of the Department's costs. Up to a maximum of \$51,000.00 of the penalty amount is available as a credit against the penalty in the form of a supplemental environmental project (SEP) described in Attachment A to this Order, which Attachment A is incorporated herein as if fully set forth at this place. The SEP shall be completed within one year of the effective date of this Order. If Department approved documented costs for the SEP exceed the \$51,000.00, the excess amount shall not be considered as an additional credit to the total penalty amount. If the documented costs for the SEP do not total \$51,000.00, the Respondent shall pay the shortfall to the Department by check as part of the total

penalty, such difference shall be paid by Respondent to Department within 45 days from Department's notice of the applicable amount to Respondent.

5.2 Publicizing Supplemental Environmental Project. Respondent shall disclose to sponsoring or collaborating entities for collection events, specified in Attachment A, that Respondent's contribution is made as part of an enforcement action settlement with the Department. The disclosure shall be in writing and included in any agreement with a collaborating entity. Respondent shall maintain for three years written confirmation (such as a line item in the agreement, contract or written correspondence) of the disclosure.

5.3. A payment in the amount of \$54,000.00 is due to Department from Respondent within 30 days from the effective date of this Order. This amount includes \$39,000.00 in penalty and \$15,000.00 reimbursement for the Department's costs.

5.4. Respondent's check(s) shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check(s) shall be sent to:

Mr. Paul S. Kewin, Section Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200
Robert L. Elliott

Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

5.5. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

EFFECTIVE DATE

6. The effective date of this Order is the date it is signed by the
Department. SIGNATORIES

7. Each undersigned representative of the parties to this Order certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind the Parties to this Order.

Dated: 4/7/05

(Original signed by Sam Trautman)
HMR (USA) Incorporated
By: Sam Trautman

Dated: 4/12/05

(Original signed by Charlene Williams)
Ms. Charlene Williams, Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control